



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2014-0409; FRL- 9920-68-Region-3]

**Approval and Promulgation of Air Quality Implementation Plan; Pennsylvania;
Determination of Attainment for the 2008 Lead National Ambient Air Quality Standard
for the Lyons Nonattainment Area**

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to determine that the Lyons, Pennsylvania nonattainment area (hereafter referred to as the “Lyons Area” or “Area”) has attained the 2008 lead (Pb) national ambient air quality standard (NAAQS). On March 31, 2014, the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection, submitted a request to EPA to make a determination that the Lyons Area has attained the 2008 Pb NAAQS. This determination of attainment is based upon certified, quality-assured, and quality-controlled ambient air monitoring data from 2011-2013 which shows that the Area has monitored attainment for the 2008 Pb NAAQS. Additionally, as a result of this determination, EPA is taking final action to suspend the requirements for the Area to submit an attainment demonstration, together with reasonably available control measures (RACM), a reasonable further progress (RFP) plan, and contingency measures for failure to meet RFP or attainment deadlines for so long as the Area continues to attain the 2008 Pb NAAQS. This determination does not constitute a redesignation to attainment. The Lyons Area will remain designated nonattainment for the 2008 Pb NAAQS until such time as EPA determines that the Lyons Area meets the Clean Air Act (CAA) requirements for redesignation to

attainment, including an approved maintenance plan. These actions are being taken under the Clean Air Act (CAA).

DATES: This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2014-0409. All documents in the docket are listed in the *www.regulations.gov*. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Ellen Schmitt, (215) 814-5787, or by e-mail at *schmitt.ellen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 2014 (79 FR 46211), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. In the August 7, 2014 NPR, EPA proposed to make a clean data determination, finding that the Lyons Area has attained the 2008 Pb NAAQS, based on certified, quality-assured, and quality-controlled ambient air monitoring data from 2011-2013.

The Lyons Area is located in Berks County, Pennsylvania and bounded by Kutztown Borough, Lyons Borough, Maxatawny Township, and Richmond Township. *See* 40 CFR 81.339.

II. Summary of Rulemaking Action

EPA is taking final action to determine that the Lyons Area has attaining data for the 2008 Pb NAAQS. This determination of attainment is based upon certified, quality-assured, and quality-controlled air monitoring data that shows the Area has monitored attainment of the 2008 Pb NAAQS based on 2011-2013 data.

Other specific requirements of the determination of attainment and the rationale for EPA's action are explained in the NPR published on August 7, 2014 (79 FR 46211) as well as in the Technical Support Document (TSD) that accompanied the NPR, and will not be restated here. The TSD is available in the docket for this rulemaking action at www.regulations.gov.

III. Effect of this Action

This final action suspends the requirements for the Lyons Area to submit an attainment demonstration, associated RACM, RFP plan, and contingency measures for failure to meet RFP or attainment deadlines so long as this Area continues to meet the 2008 Pb NAAQS. Finalizing this action does not constitute a redesignation of the Lyons Area to attainment for the 2008 Pb NAAQS under section 107(d)(3) of the CAA. Further, finalizing this action does not involve approving a maintenance plan for the Area as required under section 175A of the CAA, nor does it involve a determination that the Area has met all requirements for a redesignation.

IV. Public Comments and EPA's Responses

EPA received comments from the East Penn Manufacturing Company, Inc. (hereafter referred to as “commenter”) regarding the August 7, 2014 NPR proposing a determination of attainment for the Lyons Area for the 2008 Pb NAAQS. A full set of these comments is provided in the docket for today’s final rulemaking action.

Comment: The commenter states it is supportive of EPA’s proposed determination of attainment of the Lyons Area because such a determination is an affirmation of “historical and on-going policies and practices regarding compliance with air quality standards and minimization of lead emissions” from its manufacturing campus in the Lyons Area. The commenter states that it believes that the nonattainment plan provision requirements of section 172(c) of the CAA, including the emission inventory provisions of section 172(c)(3), will be suspended for as long as the Lyons Area continues to attain the 2008 Pb NAAQS upon EPA’s finalization of the determination of attainment for the Lyons Area. The commenter refers to a September 4, 1992 EPA memorandum¹ and a May 10, 1995 EPA memorandum,² in support of its position that the nonattainment plan provision requirements of section 172(c), including the emission inventory provisions of section 172(c)(3), should be suspended when EPA finalizes the determination of attainment for the Lyons Area. The commenter states it understands the

¹ *Procedures for Processing Requests to Redesignate Areas to Attainment*, EPA Memorandum from John Calcagni, Director, Air Quality Management Division, Office of Air Quality Planning Standards, September 4, 1992 (Calcagni Memorandum), located at <http://www.epa.gov/ttn/oarpg/t5/memoranda/redesignmem090492.pdf>. The commenter referred to this Memorandum as the “September 4, 1994 Calcagni memorandum.” EPA believes the inaccurate year was an inadvertent error as the September 4, 1992 Calcagni Memorandum addressed requirements for attainment plans necessary when an area has attained a NAAQS and seeks redesignation.

² *Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard* (Seitz Memorandum), EPA Memorandum from John S. Seitz, Director, Office of Air Quality Planning Standards, May 10, 1995, located at <http://www.epa.gov/ttn/caaa/t1/memoranda/clean15.pdf>.

nonattainment plan provisions of section 172(c), including emission inventory provision requirements in section 172(c)(3), are suspended because development and inclusion of such information in a state implementation plan (SIP) only has meaning for areas not attaining the 2008 Pb NAAQS in accordance with both the Calcagni Memorandum and the Seitz Memorandum.

The commenter asserts that “such information” will not have meaning upon final promulgation of the Lyons Area determination of attainment because the Lyons Area will be understood to have attained the NAAQS. For further support, the commenter cites to language from the Seitz Memorandum (which also references the Calcagni Memorandum and 57 FR 13498 (April 16, 1992))³ which says that “no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since ‘attainment will have been reached.’” The commenter requests that EPA acknowledge that upon final promulgation of the Lyons Area determination of attainment, all additional information requirements under section 172(c), including the emission inventory provisions, will be considered suspended as long as the Lyons Area continues to demonstrate attainment with the 2008 Pb NAAQS.

³ 57 FR 13498 was promulgated after the CAA Amendments in 1990 as EPA’s “General Preamble” which principally described EPA’s preliminary views on how EPA should interpret various provisions of Title I, primarily those concerning SIP revisions required for nonattainment areas. Although the General Preamble includes various statements that states must take certain actions, EPA specifically stated in the federal register notice that the statements in the General Preamble are made pursuant to EPA’s preliminary interpretations, and thus do not bind the states and the public as a matter of law. EPA stated that the General Preamble was an advance notice of how EPA generally intends, in subsequent rulemakings, to take action on SIP submissions and to interpret various Title I provisions. EPA notes the commenter inadvertently cites the General Preamble as 57 FR 13564 and not 57 FR 13498.

Response: EPA disagrees with the commenter's asserted position that upon final promulgation of the Lyons Area determination of attainment, all informational or planning requirements under section 172(c), including the emission inventory provisions, are considered suspended as long as the Lyons Area continues to demonstrate attainment with the 2008 Pb NAAQS.

Following enactment of the CAA Amendments of 1990, EPA promulgated its interpretation of the requirements for implementing the NAAQS in the general preamble for the implementation of Title I of the CAA Amendments of 1990 (General Preamble). *See* 57 FR 13498, 13564 (April 16, 1992). In 1995, based on the interpretation of CAA sections 171, 172, and 182 in the General Preamble, EPA set forth what has become known as its "Clean Data Policy" for the 1-hour ozone NAAQS. *See* Seitz Memorandum. The Seitz Memorandum provided that requirements to submit SIP revisions addressing RFP, an attainment demonstration, and other related requirements such as contingency measures and other specific ozone-related requirements in section 182 not relevant here, would be suspended for as long as the nonattainment area continued to monitor attainment of the NAAQS.⁴ The Seitz Memorandum did not state the emissions inventory requirement in section 172(c)(3) was suspended when an area attains the NAAQS.

Prior to the Seitz Memorandum, the Calcagni Memorandum in 1992 addressed prerequisites for redesignation of nonattainment areas to attainment. The Calcagni Memorandum indicated

⁴ EPA notes that the Seitz Memorandum specifically states that the Memorandum addresses whether areas attaining the NAAQS must submit SIP revisions concerning RFP and attainment demonstrations and related requirements such as contingency measures, transportation control measures, and section 182(g) milestones. The Seitz Memorandum does not explicitly or implicitly state that requirements to submit emission inventories in section 172(c)(3) are suspended.

certain requirements from section 172(c) including RFP, identification of certain emissions increases, and other measures needed for attainment would not apply for redesignations because they only have meaning for areas not attaining the NAAQS. The Calcagni Memorandum specifically stated that the requirements for an emission inventory in section 172(c) would be satisfied by the emission inventory requirements in section 175A for maintenance plans which must be submitted with redesignation requests under section 107(d). Thus, the Calcagni Memorandum, like the Seitz Memorandum, specifically did not state that emission inventory requirements in section 172(c)(3) were not required for areas which had attained the NAAQS, but which were still designated nonattainment as the Lyons Area is. Rather, according to the Calcagni Memorandum, the emission inventory requirement in section 172(c)(3) for nonattainment areas is required but can be satisfied by the requirement to submit an emission inventory for purposes of section 175A maintenance plans.

Likewise, EPA's General Preamble for title I of the CAA in 57 FR 13498 also discussed SIP submission requirements that are not applicable for purposes of *redesignations* of areas to attainment (in section 107(d)), such as RFP and contingency measures, where the areas in question have already attained the NAAQS. The General Preamble stated that for areas already attaining the NAAQS, such additional measures in section 172(c) that are designed to bring about attainment are not needed, and any additional measures to ensure that maintenance of the NAAQS continues would be addressed under the requirements for maintenance plans in section 175A. *See* 57 FR 13564 (stating requirement for RFP would have no meaning once an area attained). However, like the Calcagni Memorandum, the General Preamble also stated that the

emission inventory requirement of section 172(c)(3) would be satisfied during consideration of redesignation requests by the inventory requirements of the maintenance plan. *Id.* Thus, for redesignations, states can satisfy the inventory requirement in section 172(c)(3) by meeting the section 175A maintenance plan requirement to submit a base-year emission inventory.

Of more relevance, in 2004, EPA indicated its intention to extend the Clean Data Policy (from the Seitz Memorandum) to the fine particulate matter (PM_{2.5}) NAAQS.⁵ EPA's 2007 implementation rule for the 1997 PM_{2.5} NAAQS (the 2007 PM_{2.5} Implementation Rule) specifically extended the Clean Data Policy to the 1997 PM_{2.5} NAAQS providing that, when EPA makes a determination that an area designated nonattainment has attained the PM_{2.5} NAAQS, certain requirements of section 172(c) for SIP revisions shall be suspended, including requirements to submit an attainment demonstration, RFP, RACM, contingency measures and other planning SIPs related to attainment of the NAAQS.⁶ *See* 40 CFR 51.1004(c). EPA's Clean Data Policy represents the Agency's long-held interpretation that certain requirements of subpart 1 of part D of the CAA are, by EPA's terms, not applicable to areas that have attained the NAAQS before the applicable attainment date.⁷

⁵ *Clean Data Policy for the Fine Particle National Ambient Air Quality Standards*, EPA Memorandum from Steve Page, Director, EPA Office of Air Quality Planning Standards, December 14, 2004, located at http://www.epa.gov/airquality/urbanair/sipstatus/docs/pm25_clean_data_policy_14dec2004.pdf.

⁶ Although the D.C. Circuit remanded the 2007 PM_{2.5} Implementation Rule to EPA on January 4, 2013, the decision did not cast doubt on EPA's interpretation of statutory provisions, including EPA's Clean Data Policy interpretation. *See Natural Resources Defense Council v. EPA*, 706 F.3d 428 (D.C. Cir. 2013) (remanding the 2007 PM_{2.5} Implementation Rule due to concerns regarding requirements for subpart 4 of part D of Title I of the CAA).

⁷ This discussion refers to subpart 1 of part D of the CAA as this subpart contains the general and substantive attainment-related requirements for all NAAQS. Subpart 5 establishes additional requirements for the lead NAAQS, including the applicable attainment date and the deadline for states to submit a plan to meet the substantive attainment-related requirements of subpart 1.

Specifically, a determination of attainment indicates that the area has attained the NAAQS and therefore the purpose of the RFP requirement (for the nonattainment area to make progress towards attainment) will have been fulfilled. Therefore, the area does not have to address RFP, as long as it continues to monitor attainment. In addition, the goal of the attainment demonstration required by section 172(c) is to show how the area will be brought back into attainment and a clean data determination indicates that the area is in attainment.⁸ Thus, EPA has determined that an attainment demonstration is unnecessary as attainment will have been reached. Finally, the contingency measures SIP requirement in section 172(c)(9) is linked with both the attainment demonstration and RFP requirements, and similar reasoning applies for the suspension of contingency measures requirement upon a determination of attainment. Section 172(c)(9) provides that SIPs in nonattainment areas shall provide for the implementation of contingency measures to be undertaken if the area fails to make reasonable further progress or fails to attain the NAAQS. This contingency measure requirement is inextricably tied to the reasonable further progress and attainment demonstration requirements. Where an area has already achieved attainment, it has no need to rely on contingency measures to make further progress to attainment. Thus, the contingency measure requirement no longer applies when an area has attained the standard.

⁸ Likewise, EPA's Clean Data Policy suspends the requirement for RACM in SIP submissions for section 172(c) upon a determination of attainment because the intent of RACM in section 172(c)(1) is to enable an area to attain the NAAQS. RACM would not be needed as an "additional measure" if an area has attained the NAAQS.

EPA's Clean Data Policy has been reviewed and consistently upheld by a number of courts. U.S. Courts of Appeals for the Tenth, Seventh, and Ninth Circuits have all upheld EPA rulemakings applying the Clean Data Policy suspending requirements for RFP, attainment demonstrations, RACM and contingency measures. *See Sierra Club v. EPA*, 99 F. 3d 1551 (10th Cir. 1996); *Sierra Club v. EPA*, 375 F. 3d 537 (7th Cir. 2004); *Our Children's Earth Foundation v. EPA*, No. 04-73032 (9th Cir. June 28, 2005 (Memorandum Opinion)); and *Latino Issues Forum v. EPA*, Nos. 06-75831 and 08-71238 (9th Cir. March 2, 2009 (Memorandum Opinion)). Notably, in each of those EPA actions upheld by the courts, EPA suspended the planning requirements listed above but did not suspend the requirement that the state submit an emissions inventory. A listing of these rulemakings was provided in the NPR for this action and will not be restated here. *See* 79 FR 46211.

In alignment with the policies outlined in the Seitz Memorandum for ozone and the 2007 PM_{2.5} Implementation Rule mentioned above,⁹ EPA employs the same rationale when it approves the suspension of certain requirements for nonattainment areas for the 2008 Pb NAAQS.¹⁰ EPA has applied its interpretation of what SIP provisions are impacted under a determination of attainment for a nonattainment area for the 2008 Pb NAAQS in previous final determinations of attainment rulemaking actions for 2008 Pb NAAQS nonattainment areas. *See* 77 FR 52232

⁹ *See* 72 FR 20586 (April 25, 2007) (2007 PM_{2.5} Implementation Rule). *See also* 70 FR 71612 (November 29, 2005) (Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard--Phase 2 which included and extended the Clean Data Policy for ozone to the 1997 ozone NAAQS).

¹⁰ Each of the above interpretations apply only as long as a nonattainment area continues to monitor attainment of the standard. If EPA determines that the Lyons Area has violated the 2008 Pb NAAQS, the area would again be required to submit the pertinent SIP sections in section 172(c) including requirements for RFP, RACM, and contingency measures.

(August 29, 2012) and 78 FR 66280 (November 5, 2013).

In the August 7, 2014 NPR, EPA expressly stated that if we finalized the determination of attainment for the Lyons Area, the requirements for Pennsylvania to submit for the Area an attainment demonstration, associated RACM, a RFP plan, contingency measures, and other planning requirements related to attainment of the standard would be suspended for so long as the Lyons Area continues to attain the 2008 Pb NAAQS.

The commenter wrongly interprets this language to mean that upon finalization of the determination of attainment for the Lyons Area, all of the nonattainment plan provisions that fall under paragraph 172(c), including the emission inventory provisions of section 172(c)(3), will be suspended for so long as the Lyons Area continues to attain the 2008 Pb NAAQS.

Section 172(c) includes a list of requirements for SIP revisions for areas that are designated as nonattainment for a NAAQS. As discussed earlier, EPA has long interpreted some of the planning provisions that directly relate to measures aimed to achieve attainment of a NAAQS, such as RFP, RACM, and contingency measures, to no longer apply when an area is monitoring attainment of the standard. However, EPA believes a number of section 172(c) SIP revision requirements continue to apply and must be met even after EPA determines that a nonattainment area has attained a NAAQS. The provision requiring a nonattainment area to submit an emissions inventory is one such obligation that cannot be suspended simply because the area has monitored attainment. The requirement in section 172(c)(5) for a nonattainment new source review permit program in accordance with section 173 is another requirement not suspended by a

determination of attainment. As stated in the NPR and TSD for this action, a finalized determination of attainment does not undo the original designation of the area as nonattainment, nor does it redesignate the area to attainment. While the commenter cites the Seitz Memorandum, General Preamble, and Calcagni Memorandum in support of its position, those documents in fact support EPA's interpretation that the emission inventory requirement in section 172(c)(3) remains as a required SIP provision after a determination of attainment. As discussed earlier, the Calcagni Memorandum and General Preamble maintain that the emission inventory requirement in section 172(c)(3) continues to apply to areas that are attaining the NAAQS, and only provide that for purposes of redesignation under 107(d)(3)(E), the requirement can be satisfied by an emission inventory submitted pursuant to the maintenance plan required by section 175A.

Thus, EPA disagrees with the commenter that all nonattainment plan provision requirements located in section 172(c), including "informational" requirements such as the section 172(c)(3) emissions inventory provision, are suspended after a determination of attainment is made for the nonattainment area.

V. EPA's Final Action

EPA is taking final action to determine that the Lyons Area is attaining the 2008 lead NAAQS. This determination of attainment is based upon certified, quality-assured, and quality-controlled air monitoring data showing that this Area has monitored attainment of the 2008 Pb NAAQS during the period 2011-2013. This final action suspends the requirements for this Area to submit an attainment demonstration, associated RACM, RFP plans, and contingency measures for

failure to meet RFP or attainment deadlines so long as this Area continues to meet the 2008 Pb NAAQS. EPA is taking this final action because it is in accordance with the CAA and EPA policy and guidance.

VI. Statutory and Executive Order Reviews

A. General Requirements

This action, which makes a determination of attainment based on air quality, will result in the suspension of certain Federal requirements and/or will not impose any additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rulemaking action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C.

804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This rulemaking action, determining that the Lyons Area has attained the 2008 Pb NAAQS, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Lead, Reporting and recordkeeping requirements.

Dated: December 11, 2014.

William C. Early, Acting
Regional Administrator
Region III.

40 CFR part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart NN—Pennsylvania

2. Section 52.2055 is added to read as follows:

§ 52.2055 Control strategy: Lead.

(a) Determination of attainment. EPA has determined, as of **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, based on quality-assured ambient air quality data for 2011 to 2013, that the Lyons, PA nonattainment area has attained the 2008 Pb NAAQS. This determination suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 2008 Pb NAAQS. If EPA determines, after notice-and-comment rulemaking, that this area no longer meets the 2008 Pb NAAQS, the corresponding determination of attainment for that area shall be withdrawn.

(b) [Reserved]

[FR Doc. 2014-30174 Filed 12/24/2014 at 8:45 am; Publication Date: 12/29/2014]